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Serial No. 10/786,262

Office Action Dated: September 25, 2006

Response to Office Action Dated: December 22, 2006

### REMARKS

This Amendment and Response is submitted in reply to the Office Action dated September 25, 2006, in which the Examiner:

rejected claim 1 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent Application Publication No. 2003/0180570 to Cercone et al.;

rejected claims 1, 3 and 8 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,408,112 to Kazlauskas;

rejected claims 4, 5, 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Kazlauskas; and

indicated claim 13 would be allowable if rewritten in independent form.

Applicants respectfully traverse the rejections below. Claims 2, 6, 7, 11 and 12 were previously withdrawn in response to a Restriction Requirement; claims 1, 3-5, 8-10 and 13 are currently pending. Claims 1, 3 and 8, directed to various welded portion constitutions, are independent claims.

Claim 1 was rejected under 35 U.S.C. § 102(e) as anticipated by Cercone. An anticipation rejection under 35 U.S.C. § 102 is improper unless a single prior art reference shows or discloses each and every claim recitation.

Applicants' claim 1 recites a welded portion constitution comprising, in part, an inclined portion provided on an end portion of at least one of a first member and second member, said inclined portion formed by a bend in said end portion.

Cercone does not show or disclose each and every claim 1 recitation. For instance, Cercone does not show or disclose that an inclined portion is formed by a bend in an end portion of one of the weld members. Thus, even if Cercone were to show an inclined portion, Cercone would still fail to show or disclose that any such inclined portion is formed by a bend in an end portion of one of the weld members, as recited by Applicants' claim 1.

However, the Examiner stated:

Regarding applicant's arguments that Cercone does not teach a bent member or inclined portion formed by the bend, see figures 5 and 10 which show inclined members with a weld bead covering at least a part of the inclined portion. (September 25, 2006 Office Action, p. 4.)

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Even if Figures 5 and 10 "show inclined members with a weld bead covering at least a part of the inclined portion" as the Examiner asserts, Applicants respectfully submit that this is not relevant to Applicants' argument that Cercone does not show or disclose an inclined portion *formed by a bend* in an end portion of one of the weld members, as recited by Applicants' claim 1.

Applicants note that, in addition to Figures 5 and 10, header tube 12 and cross member tubes 14 also appear in Figures 1-4, 7, 8, and 11-16. (In the Figures following Figure 3, tubes 12 and 14 are shown in various stages of repair using epoxy putty and resin impregnated strips - see, e.g., Cercone, "Brief Description of the Drawings.") In none of these Figures does Cercone appear to show or disclose that either the header tube 12 or the cross member tubes 14 (A or B) have a *bend* in any portion, much less in an end portion.

Thus, Cercone does not show or disclose each and every recitation of Applicants' claim 1. Accordingly, Applicants respectfully submit that the rejection of claim 1 under 35 U.S.C. § 102(e) as anticipated by Cercone is improper for at least this reason, and should be withdrawn.

Claims 1, 3 and 8 were rejected under 35 U.S.C. § 102(b) as anticipated by Kazlauskas. An anticipation rejection under 35 U.S.C. § 102 is improper unless a single prior art reference shows or discloses each and every claim recitation.

Applicants' claim 1 recites a welded portion constitution comprising, in part, an inclined portion provided on an end portion of at least one of a first member and second member, said inclined portion formed by a bend in said end portion. Applicants' amended claims 3 and 8 are directed to constitutions for butt- and fillet-welded portions, respectively, and each also recites that an inclined (as well as a contact and a stepped) portion is formed by a bend in an end portion of at least one of the weld members.

Kazlauskas does not show or disclose each and every claim 1, 3 or 8 recitation. For instance, Kazlauskas does not show or disclose that an inclined portion is formed by a bend in an end portion of one of the weld members. Instead, Kazlauskas discloses that the free ends of pipes 10 and 12 are both formed with respective chamfered sections 14 and 18. (See, e.g., col. 2, lines 28-33.) A chamfer is defined as, "A flat surface made by cutting off the edge or

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corner of a block of wood or other material." *The American Heritage Dictionary of the English Language*, Fourth Ed., 2000. Thus, insofar as chamfered sections 14 and 18 disclose inclines, they are formed by chamfering, or cutting, rather than by bending, and do not show or disclose an inclined portion *formed by a bend* in an end portion, as Applicants' claims 1, 3 and 8 recite.

Thus, Kazlauskas does not show or disclose each and every claim 1, 3 or 8 recitation. Accordingly, Applicants respectfully submit that the rejection of claims 1, 3 and 8 under 35 U.S.C. § 102(b) as anticipated by Kazlauskas is improper for at least this reason, and should be withdrawn.

Claims 4, 5, 9 and 10 were rejected under 35 U.S.C. § 103(a) as unpatentable over Kazlauskas. A rejection under 35 U.S.C. § 103 is improper unless the Examiner establishes a prima facie case of obviousness. A prima facie case of obviousness is not established unless the prior art references, alone or in combination, teach or suggest each and every claim recitation.

Claims 4, 5, 9 and 10 each depend directly from either independent claim 3 or 8, and include additional recitations thereto. Claims 3 and 8 both recite an inclined (as well as a contact and a stepped) portion formed by a bend in an end portion of at least one of the weld members.

Kazlauskas does not teach or suggest each and every claim 3 or 8 recitation. For example, Kazlauskas does not teach or suggest an inclined portion formed by a bend in an end portion of one of the weld members. Instead, Kazlauskas teaches chamfering, or cutting, the free ends of pipes 10 and 12.

Thus, Kazlauskas does not support a prima facie case of obviousness for Applicants' claims 3 or 8. Accordingly, Applicants respectfully submit that the rejection of dependent claims 4, 5, 9 and 10 under 35 U.S.C. § 103(a) as unpatentable over Kazlauskas is improper for at least this reason, and should be withdrawn.

Having traversed each and every rejection, Applicants respectfully request that the rejections of claims 1, 3-5 and 8-10 be withdrawn, and claims 1, 3-5, 8-10 and 13 be passed to issue.

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In the event that the Examiner maintains any of the claim rejections, Applicants respectfully request that the Examiner specify, as nearly as practicable, what elements of the prior art are relied on in support of the rejection. See 37 C.F.R. § 1.104(c)(2).

Applicants believe that no fees are due in connection with this Amendment and Response. If any fees are deemed necessary, authorization is hereby granted to charge any such fees to Deposit Account No. 13-0235.

Respectfully submitted,

By 

Jeanne M. Tanner  
Registration No. 45,156  
Attorney for the Applicant

McCORMICK, PAULDING & HUBER LLP  
CityPlace II, 185 Asylum Street  
Hartford, CT 06103-3402  
(860) 549-5290